

REMARKS**Paragraphs 2 - 4 of the Office Action**

5 Claims 1-8, 10-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Number 3,017,056 to Bishop in view of U.S. Patent Number 4,566,313 to Monton. Claims 9 and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bishop in view of Monton and further in view of U.S. Patent Number 6,033,560 to Kisner.

10 Claims 1 and 10 have been amended to further define the lip. Specifically, as to claim 1, the aerosol can sits on the lip that is formed by the notch. As to claim 10, the notch creates a pair of vertical side edges that extend upwardly from the lip. This feature is shown in Figure 1 and these edges abut the aerosol can when the aerosol can is attached to the pole. It is respectfully submitted to the Examiner that Monton does not disclose a notch, but a saddle, and even if Monton did disclose a notch, there would be no
15 motivation to make the combination.

The Examiner has cited Monton for disclosing a notch. It is applicant's position that this is not a notch extending into the peripheral that forms a lip onto which an aerosol can is positioned. Monton shows a first opening extending into an end of a pole and a second opening extending lateral into the pole. The first opening allows a can to be
20 positioned *in* the pole, not on the pole. The second opening allows the actuator to contact a side wall of the canister extended into the first opening. This structure is apparent where Monton describes the biasing member 38 and dowels 40 which are used to retain the housing within the pole.

25 Initially, the tubular housing 14 is mounted to the telescoping pool pole 12 by manually depressing the pins 40 of the biasing member 38 radially inward within the interior of the housing 14 *and axially inserting the proximal end of the tubular housing 14 into the end of the telescoping pole 12*. As the pins 40 pass into the end of the telescoping pole 12 and are released, the pins 40 are tightly biased radially outward against the inside surface of the telescoping pole 12. *The tubular housing 14 is then axially and rotatably positioned within the telescoping pole 12* such that the pins 40 are aligned with apertures 17 formed in the telescoping pole 12.
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Monten, column 4, lines 8-21. As clearly stated by Monten, the housing 14 is within the pole, not on top of an edge of the pole. Thus, Monten defines a saddle extending into an interior of the pole. This is not what applicant describes. Applicant describes a lip being formed into the periphery of the pole onto which a canister may be positioned. The
5 bottom of Monten is not resting on the lip, but is secured in place with biasing member 38 and pins 40. This structure differs from applicant's device and therefore the Examiner has not found the elements of applicant's device.

Even if the Examiner has found the elements of applicant's device, the combination of Monten with Bishop is not obvious. The second opening, as described
10 above and for which the Examiner is using as a "notch," allows the Monten device to engage actuator lever 18 against the housing 14. A person familiar with the two devices would therefore believe that this structure would be effective for squeezing a plastic bottle to release fluid in a selected direction. However, Bishop's device is clearly directed for use with a pressurized spray can. The definition of a can is a usually
15 cylindrical, metal container. Microsoft Bookshelf 98. An actuation lever used to squeeze a bottle or housing would have no usefulness to Bishop as squeezing a pressurized can would not properly release its contents. Since that actuation mechanism directs the structure of Monten, there can be no motivation to transfer that structure to Bishop. Therefore, the Examiner has used the benefits of a notch taught by the applicant in order
20 to find the combination. This is impermissible hindsight reconstruction. For this reason, it is again believed that all claims are in condition for allowance.

With respect to claims 2 and 11, Bishop could not disclose a range of the distance between the lip and top end of the pole as Bishop does not disclose a lip.

With respect to claims 5, 6, 9 and 19 the Examiner redirected to the previous
25 response, which states that Bishop could have no need for a hook and loop fastener because Bishop uses arms having upper edges that can be abutted against the rim of the canister. Bishop needs this since the canister in Bishop, unlike applicant's device, does not sit on a ledge and will require means for preventing the canister from falling off of the pole when it is being used. Kisner places a bottle perpendicular to the pole and
30 therefore has no such concerns. Further, the Kisner bottle is placed at the bottom of the pole, not the top. This again allows Kisner to use a different structure than required by

Bishop. The structure is therefore not analogous and one familiar with Bishop would not be directed to make the supposed combination.

The applicant respectfully requests withdrawal of the rejection.

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CONCLUSION

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In light of the foregoing amendments and remarks, early consideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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